IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1135 of 2005

in

NOTICE OF MOTION NO. 1354 OF 1997

in

SUIT NO. 2878 OF 1997

Suresh Kashinath Kubal & ors. .. Appellants

versus

Nishikant Kashinath Kubal & ors .. Respondents

...

Mr.R.V. Govilkar a/w Mr.M.L. Joshi for the appellant.

Mr.P.G. Karande for the respondent nos.1 to 4.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 16th December 2005.

P.C.:

Heard Mr.R.V. Govilkar, the learned counsel for the appellant and Mr.P.G. Karande, the learned

counsel for the respondent.

2. The original defendants are in appeal against the impugned order whereby the learned Motion Judge overruled the objection of the defendants about maintainability of the suit.

3. The objection raised by the defendants about the maintainability of the suit was two fold. According to the defendants, the suit filed before this Court was not maintainable by virtue of section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 and, secondly, it was hit by section 69(2) of the Partnership Act.

4. In view of the admitted position that the subject premises have vested in the Maharashtra Housing and Area Development Authority established under the Maharashtra Housing and Area Development Authority Act 1976, the Rent Control Act is made inapplicable by virtue of section 5 of the Act of 1976. Section 5 of the Act of 1976 provides that the Rent Act or any other corresponding Act thereto shall not be applied to any land or building belonging to, or vesting in, the Authority under or for the purposes of that Act. Once

the Rent Act is not applicable, and it has to be held so in view of Section 5 of the Act of 1976, obviously the dispute between the parties has to be tried before the Civil Court having jurisdiction in the matter and that is how the suit has been filed before this Court.

5. As regards the objection that the suit is not maintainable being hit by section 69(2) of the Partnership Act, suffice it to say that the suit has neither been filed by an unregistered partnership firm nor any relief is sought against the unregistered partnership firm. This objection also has no merit.

6. The impugned order does not call for any interference. Appeal is dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)